

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:11-cv-00387-W**

SHARON THOMAS,

Plaintiff,

vs.

**DUKE UNIVERSITY, DUKE
UNIVERSITY MEDICAL SYSTEM,
RICHARD H. BROADHEAD, and
VICTOR J. DZAU,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants' Motion to Dismiss (Doc. No. 8). Plaintiff subsequently filed, with leave of court, an Amended Complaint on February 3, 2012 (Doc. No. 19).

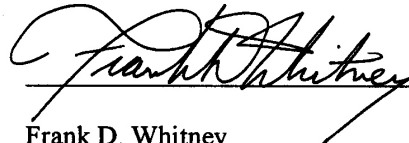
By amendment, the Motion to Dismiss is moot as a matter of law. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) ("[t]he general rule . . . is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect"); Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (defendants' earlier motions for more definite statement, to dismiss first amended complaint, and for summary judgment as to one count of first amended complaint rendered moot by filing of plaintiff's second amended complaint); see also Taylor v. Abate, 1995 WL 362488, *2 (E.D.N.Y.1995)1 ("Defendants' motion to dismiss is addressed solely to the original complaint. . . . Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied."); In re Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 80 (D.Conn.1994) (noting where "a plaintiff amends its complaint while a motion to dismiss is pending" the court may "deny[] the

motion as moot”); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at *1 n. 1 (D.Kan.1989) (holding that “motion to dismiss . . . became moot when plaintiff filed an amended complaint”); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same). The motion will be denied without prejudice as moot.

IT IS, THEREFORE, ORDERED that Defendants’ Motion to Dismiss (Doc. No. 8) is DENIED without prejudice as moot.

IT IS SO ORDERED.

Signed: February 16, 2012


Frank D. Whitney
United States District Judge

